

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Case No. 0:19-cv-02193-JRT-ECW

KEVIN PIERCE; PIERCE INVESTMENT)
COMPANY; PIERCE INVESTMENTS,)
LLC; and HAWKES CO., INC.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY;)
JANE NISHIDA, in her official capacity as)
Acting Administrator of the Environmental)
Protection Agency; UNITED STATES)
ARMY CORPS OF ENGINEERS; and)
VANCE F. STEWART, III,)
in his official capacity as Senior Official)
Performing the Duties of the)
Assistant Secretary for Civil Works,)
Department of the Army,)
)
Defendants.)
_____)

**STIPULATION FOR DISMISSAL WITHOUT
PREJUDICE UNDER FEDERAL RULE 41(a)(1)(A)**

IT IS STIPULATED AND AGREED by and between the parties¹ hereto, through their respective attorneys, that this case be dismissed without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A), with all parties to bear their own costs and fees. Good cause for this stipulation and dismissal thereunder exists as follows:

¹ EPA Acting Administrator Jane Nishida is automatically substituted for Andrew Wheeler, and Vance F. Stewart, III, is automatically substituted for R.D. James, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1. Plaintiffs filed a Supplemental Complaint against Defendants challenging two rules defining “waters of the United States” under the Clean Water Act. Plaintiffs first challenged the 2015 Rule defining “waters of the United States,” “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed. Reg. 37,054 (June 29, 2015) (“2015 Rule”). *See* Dkt. No. 1. Then, after Defendants finalized a rule that repealed the 2015 Rule and readopted the pre-2015 Rule regulations regarding “waters of the United States,” “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (“2019 Rule”), Plaintiffs supplemented their Complaint to add a challenge to that rule as well. *See* Dkt. No. 12.

2. Pursuant to court orders extending the time to do so, Defendants have filed neither an answer nor a motion to dismiss this matter.

3. All parties to this action, by their counsels’ signatures below, stipulate to dismissal of this action without prejudice with all parties to bear their own costs and fees.

Respectfully submitted,

Dated: March 10, 2021

By s/ Anthony L. François

ANTHONY L. FRANÇOIS (Cal. Bar 184100)

MOLLIE R. WILLIAMS (Cal. Bar 322970)

DANIEL M. ORTNER (Va. Bar 89460)

Pacific Legal Foundation

930 G Street

Sacramento, California 95814

Telephone: (916) 419-7111

Email: AFrancois@pacificlegal.org

Email: MWilliams@pacificlegal.org

Email: DOrtner@pacificlegal.org

NANCY Q. BURKE (# 0161044)

Saul Ewing Arnstein & Lehr LLP

33 South Sixth Street, Suite 4750

Minneapolis, Minnesota 55402

Telephone: (612) 225-2948

Facsimile: (612) 677-3844

Email: nancy.burke@saul.com

Attorneys for Plaintiffs

Dated: March 10, 2021.

U.S. DEPARTMENT OF JUSTICE

By s/ Sonya J. Shea

SONYA J. SHEA

PHILLIP R. DUPRÉ

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Defense Section

999 18th St., South Terrace, Suite 370

Denver, CO 80202

Tel: (303) 844-7231 (Shea)

Tel: (202) 616-7501 (Dupré)

Fax: (303) 844-1350

Email: Sonya.Shea@usdoj.gov

Email: Phillip.R.Dupre@usdoj.gov

Attorneys for Defendants